

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**DAVID WILLIAMS  
ADC # 78730**

**PLAINTIFF**

**VS.**

**CASE NO. 5:09CV00163-JMM-BD**

**SCOTT HORNER**

**DEFENDANT**

**ORDER**

The Court has received the Recommended Disposition from Magistrate Judge Beth Deere. Plaintiff has responded with a Motion to Reconsider and Objections.

In his Motion to Reconsider, Plaintiff contends that he had been given an extension of time up to, and including, September 23, 2011 to file a response to the pending Motion for Summary Judgment and that the Magistrate acted prematurely when she issued her recommended disposition on September 15, 2011. The record reflects that Plaintiff was notified on August 11, 2011, that defendant Scott Horner had filed a Motion for Judgment on the Pleadings and alternatively for Summary Judgment. The Court informed Plaintiff that the pleading would be treated as a Motion for Summary Judgment and that he would have 14 days to respond.

Plaintiff filed a Motion for Extension of Time on August 23, 2011, which was granted on August 25, 2011. The Order granting the motion stated that Plaintiff had until September 23, 2011, to respond to the Motion for Summary Judgment. On August 26, 2011, Plaintiff filed a "Declaration in Opposition to Motion for Judgment on the

Pleadings alternatively the Motion for Summary Judgment” with a brief (#69), a “Declaration in Opposition by David Williams to Statement of Facts” (#70), and a “Statement of Facts in Response in Opposition to Motion for Summary Judgment” (#71). Defendant filed his replies to these pleadings (#73 and #74) on August 30, 2011. The Magistrate Judge made her recommended disposition regarding the pending Motion for Summary Judgment on September 15, 2011. Plaintiff filed responses to Defendant’s replies (#81 and #82) on September 16, 2011. It is these documents, his replies to replies, that he contends should have been considered as they were filed before the September 23, 2011, deadline.

The Magistrate Judge gave Plaintiff an extension to file responses to the pending motion up to September 23, 2011. Plaintiff filed his response before that date on August 26, 2011. After Defendant filed his replies to those pleadings, the briefing for the pending motion was complete. Plaintiff did not have a right to file replies to Defendant’s replies. The Order granting the extension clearly states that the extension was for responses, not replies. Nonetheless, the Court will take those pleadings into consideration along with the timely filed objections in making its decision after a *de novo* review.

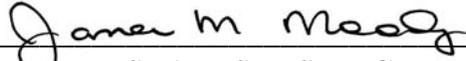
Plaintiff objects to the Magistrate Judge’s finding that he failed to exhaust his administrative remedies before filing this lawsuit contending that the Department of Correction’s policy does not allow disciplinary matters to proceed through the grievance procedure and therefore he could not exhaust his remedies. Because Plaintiff’s claim is based upon retaliation in the form of verbal abuse and not a disciplinary action, this

argument is without merit as are Plaintiff's remaining arguments.

After careful review of the recommendation, the timely objections received thereto, as well as a *de novo* review of the record including the Motion to Reconsider, the Court concludes that the Recommended Disposition should be, and hereby is, approved and adopted as this Court's findings in all respects.

Mr. Horner's Motion for Summary Judgment (docket entry #54) is GRANTED and Plaintiff's Motion for Reconsideration is DENIED (#84). Mr. Williams's claims are DISMISSED without prejudice.

IT IS SO ORDERED, this 28 day of September, 2011.

  
UNITED STATES DISTRICT JUDGE